

# United States Senate

WASHINGTON, DC 20510

June 10, 2019

The Honorable Ann Marie Buerkle  
Acting Chairman  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, M.D. 20814

The Honorable Wilbur Ross  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue Northwest  
Washington, D.C. 20230

Dear Chairman Buerkle and Secretary Ross,

We write to ask that the Consumer Product Safety Commission (CPSC), together with the Department of Commerce (Department), undertake action to adopt stricter specific mandatory regulations concerning “toy guns,” imitation guns, and non-powder guns. Specifically, we request that CPSC issue regulations to ensure that non-powder guns, including traditional BB guns, look markedly different from real firearms, imitation and toy guns. In other words, all three categories of real, toy or imitation, and non-powder guns should look significantly different from one another. Such regulations are long overdue; in fact, more than two decades ago former CPSC Chairwoman Ann Brown recognized the dangers of toy and non-powder guns and called on the industry to stop producing lookalikes.<sup>1</sup> Today, a CPSC safety alert warns, “BB guns can kill a person.”<sup>2</sup>

Current regulations require “a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm,” or that toy guns be brightly colored singly or in combination with specified colors, have an orange marking on the barrel’s exterior, or be made fully of transparent or translucent materials.<sup>3</sup> Unfortunately, these orange tips are easily removed or camouflaged.<sup>4</sup> Current statute states that the Department of Commerce “may provide for an alternate marking or device for any toy, look-alike, or imitation firearm.”<sup>5</sup> Current regulations do not have any requirements regarding the appearance of non-powder guns.<sup>6</sup> Such regulations, if adopted, would provide better protection for consumers and the general public.

In addition, the regulations concerning toy and imitation guns are over 30 years old and in need of an update. As early as 1990, a Bureau of Justice Statistics report found that “[r]eactions to the

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<sup>1</sup> <https://www.cpsc.gov/content/cpsc-chairman-challenges-toy-industry-to-stop-producing-look-alike-guns>

<sup>2</sup> <https://www.cpsc.gov/s3fs-public/5089.pdf>

<sup>3</sup> See 15 CFR Section 1150.3 Approved markings and ASTM F963 Consumer Safety Specification for Toys, Section 4.30 which mirror such requirements.

<sup>4</sup> <https://www.nytimes.com/2014/12/21/magazine/off-target-on-toy-gun-regulation.html>;  
<https://www.thetrace.org/2019/05/replica-gun-licensing-deals/>

<sup>5</sup> See 15 U.S.C. § 2052(a)(5)(E) (exempting firearms from the definition of “consumer product” subject to the authority of the Commission); Rev. Rul. 67-453, 1967-2 C.B. 378 (stating that air rifles and air pistols are not part of that exemption); <https://www.law.cornell.edu/uscode/text/15/5001>; see 15 CFR 1150.3 which does provide for alternate marking of toys, but not air gun weapons.

<sup>6</sup> *Id.*

[alternate] markings by police personnel included ‘ineffective’; ‘ridiculous’; ‘ludicrous’; ‘that won’t make any difference’; and several more colorfully descriptive comments.”<sup>7</sup> In fact, “[i]n all the site visits, every person the researchers spoke with expressed the belief that the minimal marking standards were sufficient.”<sup>8</sup> An earlier study in 1989 found that FBI recruits were confronted by assailants carrying firearms or guns with orange tips. The recruits had two seconds to decide whether to shoot. When faced with unmarked replica pistols or guns with orange tips, officers shot 95 percent of the time.<sup>9</sup> The study noted that “the orange plug marking system does not help police officers to distinguish between toy guns and real guns.”<sup>10</sup>

Perhaps most concerning of all, children are unable to tell the difference between toy guns or imitation guns and real firearms. According to a 2018 study from Emory University, a majority of children could not tell the difference between a real gun and an imitation gun when presented with comparison photos.<sup>11</sup> In contrast, a majority of parents, caregivers, and the children themselves were confident their children could distinguish between real and toy guns.<sup>12</sup>

According to the *Washington Post*’s police shooting database, 153 people have died at the hands of police while holding either an air gun, imitation gun or toy gun guns since 2015.<sup>13</sup> Analyzing data from 2015-2016, the *Washington Post* found that police shot and killed 53 people who were holding pneumatic BB or pellet guns, 16 people who were holding Airsoft guns, 13 people who were holding replicas guns, and two people who were holding toy guns.<sup>14</sup> Even more troubling, the numbers suggest that black and Latino individuals are more likely to be victims of these types of police shootings.<sup>15</sup> Law enforcement, recognizing the dangers these unregulated air guns pose, have taken it upon themselves to warn the public of the dangers of wielding them in public.<sup>16</sup>

As gun sales continue to fall, firearm manufacturers are looking for new and novel ways to target a younger demographic.<sup>17</sup> Licensing deals whereby firearm manufacturers allow their products to

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<sup>7</sup> <https://www.bjs.gov/content/pub/pdf/tg-icep.pdf>

<sup>8</sup> *Id.*

<sup>9</sup> <https://www.ncjrs.gov/pdffiles1/digitization/146870NCJRS.pdf>

<sup>10</sup> *Id.*

<sup>11</sup> <https://www.medpagetoday.com/meetingcoverage/aap/76117>

<sup>12</sup> [https://news.emory.edu/stories/2018/11/fraser\\_doh\\_toy\\_gun\\_study/index.html](https://news.emory.edu/stories/2018/11/fraser_doh_toy_gun_study/index.html)

<sup>13</sup> <https://www.thetrace.org/2019/05/replica-gun-licensing-deals/>; <https://github.com/washingtonpost/data-police-shootings/blob/master/fatal-police-shootings-data.csv>

<sup>14</sup> [https://www.washingtonpost.com/investigations/in-two-years-police-killed-86-people-brandishing-guns-that-look-real-but-arent/2016/12/18/ec005c3a-b025-11e6-befc-8cec35b1ad25\\_story.html?utm\\_term=.25d708147b4c](https://www.washingtonpost.com/investigations/in-two-years-police-killed-86-people-brandishing-guns-that-look-real-but-arent/2016/12/18/ec005c3a-b025-11e6-befc-8cec35b1ad25_story.html?utm_term=.25d708147b4c)

<sup>15</sup> <https://www.nytimes.com/2014/12/21/magazine/off-target-on-toy-gun-regulation.html>

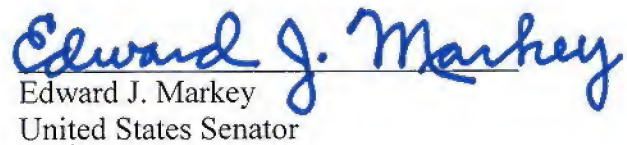
<sup>16</sup> <https://www.krqe.com/news/albuquerque-metro/police-urge-the-public-to-use-caution-with-air-soft-guns/1696391359>; <https://fox59.com/2018/11/28/local-police-departments-warn-about-dangers-of-buying-airsoft-guns-during-holidays/>; <https://www.wlwt.com/article/can-you-tell-the-difference-police-warn-parents-about-the-dangers-of-toy-guns/27399177>; <https://www.wtsp.com/article/news/nation-world/lets-avoid-tragedy-police-issue-safety-warning-about-buying-toy-guns-for-your-kids/67-618002352>

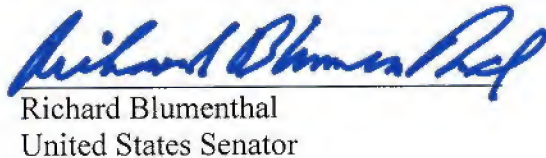
<sup>17</sup> <https://www.reuters.com/article/us-usa-guns-sales/u-s-gun-sales-down-6-1-percent-in-2018-extending-trump-slump-idUSKCN1PN346>; <https://theintercept.com/2018/02/25/young-people-guns-marketing-video-games/>

be reproduced as imitation guns are part of a broader strategy to market their products to children.<sup>18</sup>

It is past due time for Commerce to revise its regulations concerning toy guns and imitation guns and for the CPSC to strengthen regulations concerning non-powder guns. To that end, we ask the Department and the CPSC to adopt stricter specific mandatory regulations for such products. These regulations should require markings that are conspicuous and tamper-proof. Thank you in advance for your cooperation. Please contact Shelby Boxenbaum ([Shelby\\_Boxenbaum@menendez.senate.gov](mailto:Shelby_Boxenbaum@menendez.senate.gov) or 202-224-4744) with any questions.

  
Robert Menendez  
United States Senator

  
Edward J. Markey  
United States Senator

  
Richard Blumenthal  
United States Senator

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<sup>18</sup> <https://www.thetrace.org/2019/05/replica-gun-licensing-deals/>